REMARKS/ARGUMENTS

I. PRIOR ART MATTERS

A. The Office Action rejected claims 1-10 under the judicially created doctrine of obviousness-type double patenting over claims 1-9 of U.S. 6,179,736 in view of France 2,689,228.

A timely-filed terminal disclaimer is submitted herein.

B. The Office Action rejected claims 1-10 under 35 USC 103(a) as being unpatentable over the "Gold Tip" advertisement, in view of Leedy 394, 085, and France 2,689,228.

Applicant respectfully traverses the rejection.

The Examiner bears the initial burden of factually supporting any *prima facie* conclusion of obviousness.[1] If the Examiner does not produce a *prima facie* case, the applicant is under no obligation to submit evidence of non-obviousness.[2]

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure.[3]

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[1]MPEP Sec. 2142.

[2] Id.

[3]Id. (emphasis supplied)

Applicant respectfully traverses the § 103 rejection because the office action has not established a *prima facie* case of obviousness.

The Leedy reference is non-analogous art.

To rely on a reference under 35 USC 103, it must be analogous prior art.[4]

"In order to rely on a reference as a basis for rejection of an applicant's invention, the reference must either be in the field of the applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the inventor was concerned."[5]

"A reference is reasonably pertinent if, even though it may be in a different field from that of the inventor's endeavor, it is one which, because of the matter with which it deals, logically would have commended itself to an inventor's attention in considering his problem."[6]

As to Leedy, it is clearly not in the field of Applicant's endeavor. Leedy is also not reasonably pertinent to the particular problem with which the inventor is concerned, which is a graphite arrow that is partially tapered and partially non-tapered, composed of the carbon fibers running in two mutually, substantially perpendicular directions on the arrow shaft. Leedy is a design patent for a dart pen, not an arrow. A person of ordinary skill in the art would not reasonably have expected to solve the problem of a graphite arrow that is partially tapered and partially non-tapered, composed of the carbon fibers running in two mutually, substantially perpendicular directions on the arrow shaft by considering a reference dealing with a dart pen. Hunting arrows are approximately 30 inches long and travel at speeds up to 300 feet per second, imparting enormous kinetic energy to penetrate the target. Leedy, on the other hand, deals with an apparently hand-thrown device that also includes a pen. Such a device would travel at most at 10 feet per second if thrown at all. There is no discussion in

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[4] MPEP 2141.01(a)

[5] id. (citing *In re Oetiker*, 977 F.2d 1443, 1446, 24 USPQ2d 1443, 1445 (Fed. Cir. 1992)

[6] id. (citing *In re Clay*, 966 F.2d 656, 659, 23 USPQ2d 1058, 1060-61 (Fed. Cir. 1992)

Leedy about the use of the device, but the fact that it is a pen suggests that it is perhaps not thrown at all.

Claim 1 is therefore allowable. Claims 9 and 10 are allowable for the same reasons.

Claims 2-8 are also allowable in that they contain additional elements or limitations beyond an allowable independent claim.

For the above reasons, Applicant respectfully requests the allowance of all claims and the issuance of a Notice of Allowance.

Respectfully submitted,

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